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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,714	03/22/2004	Wilhelmus Joseph Leonardus Suyker	DVME-1003USDIV4	9243
21302	7590	07/22/2009		EXAMINER
KNOBLE, YOSHIDA & DUNLEAVY			DANG, PHONG SON H	
EIGHT PENN CENTER			ART UNIT	PAPER NUMBER
SUITE 1350, 1628 JOHN F KENNEDY BLVD				3773
PHILADELPHIA, PA 19103				
			MAIL DATE	DELIVERY MODE
			07/22/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/805,714	<b>Applicant(s)</b> SUYKER ET AL.
	<b>Examiner</b> SON DANG	<b>Art Unit</b> 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 May 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-18,20-30 and 42-56 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 15-18,20-30 and 42-56 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 22 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

#### **DETAILED ACTION**

1. The amendment filed 05/18/2009 has been entered. The previous claim objection of claims 15-30 and 42 are withdrawn in light of applicant amendment to the claims. Claims 43-56 have been added. Therefore, claims 15-18, 20-30 and 42-56 are currently pending in the application.
2. The finality of the rejection and the allowable subject matters of the last Office action are withdrawn due to a new ground of rejection.

#### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15-18, 20-30 and 42-56 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,669,918 to Balazs et al. (Balazs).

In Regards to claims 15-18, 20-30 and 42-56:

Balazs teaches:

An applicator (see Fig. 1) for making an anastomosis including a head with (see Fig. 2a) a plurality of arms (ref. 20, Fig. 2a), the arms moveable between a first and second position (see ref. 20 in Fig. 2a and Fig. 2b), a shank-like element (ref. 5, Fig. 2a and 2b) comprising a part proximal to the distal end of the shank-like element having a surface portion (ref. 22 and ref. 54, Fig. 2a and 2b) to aid in moving the arms between the two positions, wherein the distal ends of said arms are adapted to support a hollow structure (col. 8, lines 28-31) and hold joining elements (ref. 30, Fig. 2a; ref. 30 if Fig. 2b is located at the distal end of the arms), a proximal end of each arm is attached to an attachment member

(ref. 2, Fig. 2a and 2b), said arms expand from the first to second position by deformation (by deformation against ref. 42, Fig. 2a and 2b), a detainer (ref. 35, Fig. 2a and 2b) for controlling movement of the joining elements, the detainer comprising surface portions (distal end of ref. 35, Fig. 2a and 2b), the detainer being axially moveable with respect to the arms (see difference between ref. 35 in Fig. 2a and 2b; the detainer moves axially as the arms are moved outward and inward), axial movement of the detainer positions the joining elements (col. 8, lines 34-40), the joining elements becoming disengaged from the surface portions (after they have been put into the hollow structure, they are released from the surface portions), and the surface portions (ref. 4, Fig. 2a and 2b; ref. 4 prevents lateral movement of the arms until they are pushed outward by the shank-like element; ref. 4 is also part of the detainer because it is connected to it) limiting the movement of the arms form part of the detainer (the detainer is part of the head) or head. Wherein the first distance of separation between said arms (20 with tip 23, Fig. 2b) is less than a distance of separation between the proximal ends of said arms (20, Fig. 2b) when said arms are in the first position.

***Response to Arguments***

4. Applicant's arguments with respect to claims 15-18 and 20-30 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment on 04/30/2008 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

/Julian W. Woo/  
Primary Examiner, Art Unit 3773